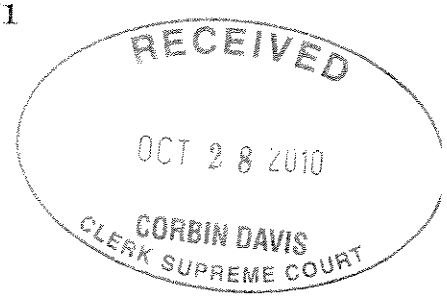
HOFF ADVOCACY GROUP OF MICHIGAN, PLC

28719 KARAM DRIVE
MADISON HEIGHTS, MICHIGAN 48071

PHONE: 248.232.8922
FACSIMILE: 248.232.8922




ROBERT HOFF, ESQ.
ADVOCATE AND COUNSELOR

Michigan Supreme Court
Clerk's Office
PO Box 30052
Lansing, MI 48909

October 27, 2010

*Re: Comments on Proposed Amendment to Michigan Rule of Professional Conduct 7.3*

Dear Clerk:

Please consider the following as my comment to the proposed amendment to Michigan Rule of Professional Conduct 7.3.

I largely agree with the comment submitted by Mr. Steven J. Matz in opposition to the proposed amendment; however, I write in opposition to the proposal from a different perspective. I have no pecuniary interest in the proposed change, as I am not engaged in soliciting clients to my legal practice. I oppose the proposed amendment to Michigan Rule of Professional Conduct 7.3, because the amendment is unnecessary, imprudent, and impractical.

Expounding in part on Mr. Matz's comment, I would like to point out that *Shapero*, which is cited in the existing Rule 7.3, and the case law stemming from that decision explain and constrain the limits on attorney advertising. Therefore, the proposed requirement appears to be mere surplusage, and, likely, an inconvenience for all of the practitioners who, indeed, practice within the bounds of our ethical and legal obligations.

It has always appeared that the problem that Rule 7.3 seeks to address, to the extent that one exists, is with the rogue attorney, the "ambulance chaser." That attorney is conceived of as an opportunist who wields the title of "attorney" as a tool to coerce those who he or she knows are in need of legal services into making a decision about legal representation, without affording those prospective clients the opportunity to assess their legal needs and those available to best address those needs.

Mr. Matz's comment directly confronts the notion that our profession is somehow mired in a sea of rogues. As Mr. Matz observed from his direct involvement in adjudicating disciplinary proceedings, he has not seen any increase in the ambulance chasing activity during his tenure that justifies action at this time.

Accordingly, inasmuch as the law already governs this area, and there is no new or increasing need to address the perceived problem, the amendment to Rule 7.3 is unnecessary.

The amendment is also imprudent. The proposed change would risk eroding confidence in and the legitimacy of our Supreme Court. When the Judiciary exercises its quasi-legislative authority, it is scrutinized. This occurs when judges interpret a statute, ordinance, or doctrine in such a way as to affect policy and shape behavior. Often, even when called for, such action be the Judiciary is viewed as activism, because some believe policy decisions should only be in the hands of the Legislature.

When the Judiciary engages in what is clearly a legislative act, enacting rules, it follows that such activity must be limited to needs currently facing the administration of justice. Any other rule-making act by the Judiciary could, and likely would, appear to be a usurpation of legislative authority from the People. Therefore, needless rule-making risks undermining the authority of our Judiciary, by eroding the public confidence in that institution, the source of the institution's legitimacy. Accordingly, rule-making in absence of need is imprudent.

Moreover, the proposed amendment is impractical, and likely unworkable as written. A "communication that seeks professional employment" is a descriptor that includes a large variety of materials that would not normally be considered advertising. For example, each time an attorney updates a client in writing (by mail, electronic mail, or otherwise), sends an invoice that reflects some discount, or sends a holiday "thank you" card to a client, that attorney is likely seeking future work as one of his or her objectives. One may argue that a current client is not a prospective client, but in today's business environment, that argument would be myopic.

If an attorney has a client that is a business organization, the contact individuals at that entity could wield significant decision-making authority with regard to other business entities that are not yet clients of the attorney. In fact, by fulfilling his or her professional responsibilities to his or her current client, an attorney may very well intend to impress decision-makers in order to receive additional work from other entities somehow related to the client. This is understandable, normal business behavior; however, the proposed amendment would require the attorney to label all contacts as advertising. This is simply impractical and overreaching.

Moreover, if an attorney is seeking a position as in-house counsel with a business organization, and that organization is not yet a client of the attorney, the proposed amendment would require (if given its plain and ordinary meaning) that the attorney's *curriculum vitae* be marked as advertising material, where there is some chance that the organization may contract the attorney as counsel in the future. This is an absurd result, but this example highlights the impracticality of the proposed amendment.

Accordingly, I oppose the unnecessary, imprudent, and impractical amendment to MRPC 7.3.

Very truly yours,

Robert Hoff